U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

JAN 26 2005

FILE: ████████████   Office: VERMONT SERVICE CENTER   Date:
EAC 01 143 50045

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The petitioner then filed a motion to reopen, which the AAO dismissed as untimely. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

Counsel, on motion, states that the previous motion was timely filed, and therefore the AAO erred in dismissing the motion as untimely.

Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. 8 C.F.R. § 103.5(a)(1)(i). A motion must be submitted to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction. 8 C.F.R. § 103.5(a)(1)(iii)(E). 8 C.F.R. § 103.2(a)(1) indicates that a motion must be filed at the correct location. 8 C.F.R. § 103.2(a)(7) indicates that the filing date is the "date of actual receipt" when the document is properly filed (meaning, among other things, filed at the correct office).

Counsel submitted the first motion to the AAO, not to the Vermont Service Center which maintained the record. The AAO's dismissal notice had advised the petitioner and counsel that the record of proceeding had been returned to the Vermont Service Center. Because the petitioner did not submit the motion to the correct office, the Vermont Service Center did not actually receive the motion until after the filing deadline had passed. We do not consider the mailing of the motion to the wrong address to be a factor beyond the control of the petitioner.

Counsel, in the present motion, states "[i]n the event that the Service is taking the position that the motion should have been sent to the Vermont Service Center, we respectfully request that the Service accept the motion by certification so that a decision on the merits may be made." 8 C.F.R. § 103.4(a)(1) provides for certification "when the case involves an unusually complex or novel issue of law or fact." Here, there is no such complex or novel issue. Counsel merely requests certification in order to nullify the effect of an untimely filing. Counsel's request that the AAO review the matter on certification is not binding on the AAO. Counsel has not shown that the AAO erred in dismissing the previous motion as untimely. If the petitioner seeks consideration of the materials newly submitted with the previous motion, the proper course of action would be to resubmit those materials in the context of a newly-filed petition.

ORDER: The motion is dismissed.